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TAGS: [PGOV](#) [PREL](#) [ECON](#) [EINV](#) [PHUM](#) [TU](#)  
SUBJECT: INTERNATIONAL BUSINESS COMMUNITY VOICES GROWING  
FEARS ON INVESTMENT CLIMATE'S UNPREDICTIBILITY,  
POLITICIZATION

REF: (A) ANKARA 1497 (B) ISTANBUL 365 (C) ISTANBUL 316

Classified By: Consul General Sharon A. Wiener under Section 1.4 (b) and (d)

1.(C) Summary: Representatives of American companies in the American Business Forum in Turkey (ABFT) on October 16 underscored to the Ambassador concerns that Turkey's investment climate was becoming unduly politicized. Piraye Antika, Chairperson of YASED (Turkey's International Investors' Association), echoed ABFT concerns on behalf of the larger foreign investment community. Particularly alarming were the Dogan (ref A) and other administrative cases in which the GOT was overtly exploiting historically "gray areas" of the law against legitimate businesses to political end. GOT suborning of administrative and legal bureaucracies for political objectives has created an environment that those who are willing to talk say is increasingly characterized by fear. There is considerable potential for these concerns to become more public and intrude on bilateral efforts to boost trade and investment relations. In this vein, Citi Turkey informed the Ambassador on October 23 that it would invoke its rights under the U.S.-Turkey Tax Treaty in connection with a recent US\$400 million tax assessment levied against the company. End summary.

ABFT: Politicization Concerns Overshadowing "Doing Business" Issues

12. (C) ABFT Board members told the Ambassador that American companies in Turkey feared Turkey's investment climate was taking a downward turn. Companies continued to face familiar and manageable problems such as non-transparency and undue red tape but generally enjoyed positive returns on investment. However, the aggressive and partisan nature of administrative enforcement actions, coupled with reduced independence of the adjudicating authorities, undermined what investors - foreign and domestic - prized most in an investment environment: predictability.

13. (C) Representatives bemoaned an unhealthy pattern of GOT behavior toward investors. Companies were first lured with attractive offers of investment terms; once in place, however, they faced invasive inspectors, aggressively pursued tax actions, administrative levies, and fines. Some cases appeared driven by bureaucratic revenue-generating imperatives, some by anti-foreign "nationalist" sentiment, and some by partisan considerations - collectively, they scared investors. The pattern fostered a "settlement culture" that was understood by all and exploited by authorities whatever their motivation. The only group

favorable in this equation was the "Bizim Group" (our group) - companies aligned with the ruling party.

14. (C) Prompted to comment on Alpaslan Korkmaz, head of the Investment Support and Promotion Agency, ABFT Board members complained that he was "a salesman without any service requirements in his job description". He was the Prime Minister's man to attract foreign investors but the GOT had nobody to address a company's problems once it was established.

YASED: Abuse of "Gray Areas" Chilling Investment Climate

15. (C) As Chair of YASED, which represents the largest FDI companies in Turkey, HSBC Bank General Manager Piraye Antika (protect) echoed and elaborated on anxieties voiced by ABFT. According to Antika, traditional "doing business" problems - work permits, IPR, glacial bureaucracy - remained. Even though many foreign companies - most American companies, certainly - in Turkey were headed by Turks, hidden nationalism continued to be a problem but was not getting worse. Innumerable problems associated with EU harmonization created "gray areas" of law which were manageable and slowly being remedied. "Britain developed its European system in 500 years; Turkey is doing it in two or three." Legal drafting and conflict issues were natural.

16. (C) What marked the current period as especially problematic for the investor community, according to Antika, was the conscious exploitation of "gray areas" to political effect. She said such areas had existed in law for 80 years

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but had never been used politically, except perhaps against selected minorities in the middle of the last century. Underway now was a politically directed redistribution of wealth that would have to be accepted to some extent, but could it be done sustainably, she asked. The Dogan experience was very troubling - what if the GOT started going against other "old money"? Wider actions against elites could damage a financial sector that had weathered the global financial crisis well but was considerably exposed in lending to traditional Turkish elites.

17. (C) Antika highlighted the extent to which the ruling party could bend government machinery to achieve its ends with the business community. Two years ago, for example, Akbank won an important tax case involving withholding and inflation issues. Despite the ruling, she reported, the Ministry of Finance issued new regulations which essentially eviscerated the court's ruling. The Ministry never sent auditors out to the bank or developed new evidence but was able to extract a costly settlement. Even businesses that profess to stand on principle and litigate must ultimately do "carpet merchant math" about the bottom line and settle - fostering a "settlement culture" that impelled the GOT further, she concluded. Compounding this climate was a gradual "seeding" of the ministries with personnel chosen on the basis of their "faith", i.e. alignment with the ruling party. Antika complimented Deputy Prime Minister Babacan and Treasury Under Secretary Canakci on macroeconomic policy - "they're a great team; we have confidence in them" - but said politically motivated exploitation on a microeconomic level was frightening investors and citizens and getting worse.

18. (C) Antika concluded that the environment had cowed economic players into a silence that had to be broken. This climate's associated self-censorship in part explained why the problem was not featured in the most recent EU report, according to Antika. Left to itself, the climate would alienate healthy investors and promote economic relations with bad examples such as Russia and Iran. YASED had proposed a public-private collaboration to identify and address the "gray areas." She noted also that YASED met twice a year with the Prime Minister, each time preceded by a meeting of its International Advisory Board to which Antika

invited the Ambassador.

#### Citi Case

¶9. (C) Citi Turkey General Manager Serra Akcioglu raised with the Ambassador October 23 Citi's difficulties in negotiating with the GOT over an onerous tax assessment. Citi has been negotiating with the Revenue Administration (RA) for several years over the RA's claim that Citi failed to withhold taxes on certain investment activities between 2002 and 2006. During the first Erdogan Administration, Citi negotiated an agreement with then Finance Minister Unakitan that they would pay 70% of the GOT assessment for 2002, but with the understanding that its total liability for all years 2002-06 would not exceed 50% of the assessment. Citi paid the 70% for 2002 and continued negotiating on the later years. However, on October 15, the RA gave Citi an assessment of \$400 million for years 2003-06, and told them they would have to pay or begin a court challenge by October 28. When they raised their earlier agreement with Unakitan, they were told (1) that was a verbal agreement only, and they were not bound by it, (2) the 70% settlement they agreed to for 2002 was too generous and they should have paid more, and (3) given the atmosphere surrounding the Dogan case, the GOT can no longer negotiate settlements with taxpayers. When Citi then said they were invoking their rights under the U.S.-Turkey Tax Treaty for consultations, the RA said they have an internal regulation that they do not recognize tax treaty rights once the deadline for a court action has passed. Citi notes that they could only invoke the treaty once they received a "final assessment," which they said they received only on October 15. The RA rule then gives them only 13 days in which they could exercise their treaty rights.

¶10. (C) Comment: The business sector's concerns about the politicization of legal processes are not new (reftels) but are intensifying. To be sure, business organizations and the media continue to criticize and contest government policy and practice in Turkey. And it's hard to conclude

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definitively that any particular tax case or administrative action taken in isolation doesn't have some rational basis. Taken collectively, however, and coupled with Ergenekon and other politically significant legal actions, the cases cited by our contacts are part of a disturbing trend that is undermining confidence in rule of law in Turkey. In the near term, business fears may disrupt bilateral efforts to boost economic relations. In the longer run, the developments if left unchecked may retard needed foreign and domestic investment and threaten to corrode checks and balances necessary for a healthy polity and functioning democracy. End Comment.

WIENER